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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 JAMES GERALD GARZA,

11 Defendant.

NO: 2:10-CR-6069-RMP

ORDER DENYING DEFENDANT'S  
MOTION TO VACATE, SET ASIDE,  
OR CORRECT SENTENCE UNDER  
28 U.S.C. § 2255

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13 BEFORE THE COURT is Defendant's Motion to Vacate, Set Aside, or  
14 Correct Sentence under 28 U.S.C. § 2255, ECF No. 162. The Court has reviewed  
15 the motion and the record and is fully informed.

16 Defendant's pro se motion raises numerous related grounds to challenge his  
17 sentence as he argues that he was "double sentenced" and subject to various  
18 enhancements that should not have been applicable to his case. *See generally*  
19 Motion, ECF No. 162. Defendant relies on four separate grounds that reference  
20 "*Johnson v. United States*," "enhancements of 851 and 841," ineffective assistance  
21 of counsel, a memorandum from former U.S. Attorney General Eric Holder

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1 regarding the “Policy on Charging Mandto [sic] mim. [sic] sentences,” and the  
2 applicability of enhancements due to prior crimes of violence and playing a  
3 leadership role.<sup>1</sup> *See id.* Defendant’s various arguments all relate to his assertion  
4 that “I was double sentenced and didn’t have a crime of violence. [N]or played a  
5 leadership role, and got sentenced with enhancements of 851 and 841 [sic].  
6 According to Johnson v. United States [sic].” *Id.* at 4.

7 On January 25, 2012, Defendant pleaded guilty to “Possession with Intent to  
8 Distribute 5 grams or more of a schedule II Controlled Substance,  
9 methamphetamine actual, in violation of 21 U.S.C. § 841(a)(1).” Plea Agreement  
10 at 1, ECF No. 117. “If any person commits such a violation after a prior  
11 conviction for a felony drug offense has become final, such person shall be  
12 sentenced to a term of imprisonment which may not be less than 10 years and not  
13 more than life imprisonment . . . .” 21 U.S.C. § 841(b)(1)(B)(viii). Defendant had  
14 three prior felony drug trafficking convictions, the most recent of which was

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15 <sup>1</sup> An Amended Judgment was entered in Defendant’s case on November 9, 2012.  
16 Amended Judgment, ECF No. 149. Although Defendant filed this motion within  
17 one year of the Supreme Court decision in *Johnson v. United States*, 135 S.Ct.  
18 2551 (June 26, 2015), that ruling does not support his motion. Defendant’s other  
19 arguments that he includes in his motion, filed nearly four years after entry of  
20 Judgment (June 10, 2016), are time-barred pursuant to 28 U.S.C. § 2255(f).  
21

1 committed in 2002. *See* Final Pre-Sentence Investigation Report at 33, ECF No.  
2 134. Therefore, Defendant was subject to a statutory minimum sentence of 10  
3 years, and he recognized that fact in his signed plea agreement. *See* Plea  
4 Agreement at 2, ECF No. 117.

5 Although the Court construes Defendant's pleadings liberally due to his pro  
6 se status, none of his arguments are applicable to his sentence. Defendant was not  
7 subject to any "career offender" enhancement, and no enhancements were given  
8 for crimes of violence or an alleged leadership role. *See* Final Pre-Sentence  
9 Investigation Report, ECF No. 134; *see also* Statement of Reasons, ECF No. 150.  
10 Instead, the Court departed downward from his then applicable Guideline range  
11 (130-162 months) to sentence Defendant to the absolute minimum sentence  
12 permissible by statute. *See* Statement of Reasons, ECF No. 150. The Court  
13 previously considered the facts to which Defendant pleaded guilty and granted his  
14 request for a downward departure in order to sentence Defendant ten months below  
15 his then applicable Guideline range. Therefore, Defendant's arguments that he was  
16 "double sentenced" or subject to enhancements are not only belied by the record,  
17 they also ignore the fact that Defendant's sentence was not based on his Guideline  
18 calculation, but rather on the applicable statutory minimum. Therefore, the Court  
19 has no basis to vacate, set aside, or correct Defendant's sentence.

20 An appeal of this Order may not be taken unless a circuit justice or judge  
21 issues a certificate of appealability (COA). 28 U.S.C. § 2253(c). The Court may

1 only issue a COA “if the applicant has made a substantial showing of the denial of  
2 a constitutional right.” *Id.* The Court has no basis to find that any reasonable jurist  
3 would resolve Defendant’s constitutional claims differently. Therefore, no  
4 certificate of appealability shall issue.

5 Accordingly, **IT IS HEREBY ORDERED** that Defendant’ Motion to  
6 Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, **ECF No. 162**, is  
7 **DENIED**.

8 The District Court Clerk is directed to enter this Order and provide copies to  
9 counsel.

10 **DATED** November 8, 2016.

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12 *s/ Rosanna Malouf Peterson*  
13 ROSANNA MALOUF PETERSON  
14 United States District Judge  
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